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IN THE

Supreme Court of the United States

No. 676 Term, 195

UNITED STATES OF AMERICA,
Plaintiff

vs.

ELSIE MUMMA,
Defendant-Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

In re the Judgment entered by the United States Court of Appeals for the Third Circuit at No. 11,887.

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IN THE

SUPREME COURT OF THE UNITED STATES

No.

United States of America,

Plaintiff

vs.

Elsie Mumma,

Defendant-Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Elsie Mumma, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled case October 5, 1956 at No. 11,887.

Opinions Below
Jurisdiction

A. OPINIONS BELOW

The opinion in this case of the Hon. Frederick V. Follmer, United States District Judge for the United States District Court for the Middle District of Pennsylvania, is attached hereto as Appendix "A". This opinion has not been printed in any official or unofficial reports. The opinion in this case of the United States Court of Appeals for the Third Circuit (McLaughlin, Kalodner, and Staley, Circuit Judges), is attached hereto as Appendix "B"; this opinion has not been printed in any official or unofficial reports.

B. JURISDICTION

The judgment sought to be reviewed is that of the United States Circuit Court of Appeals for the Third Circuit, No. 11,887, dated and entered October 5, 1956. No petition for rehearing has been filed with the United States Circuit Court of Appeals for the Third Circuit, or with the United States Supreme Court, and no petition for an extension of time within which to petition for certiorari has been filed with the United States Supreme Court. It is believed that jurisdiction to review this judgment in question is conferred upon the United States Supreme Court by Title 28, United States Code, section 1254, which provides:

"Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted on petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

and by Title 28, United States Code, section 2101 (c), which reads:

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in any civil act, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

Title 28 of the United States Code was passed as a single act by the Act of June 25, 1948, c. 646, 62 Stat. 909.

C. QUESTIONS PRESENTED

1. Is a civil penalty imposed for the purpose of affecting the interstate market in wheat upon a farmer for planting or harvesting of wheat a power granted to the Federal government under the commerce clause of the Constitution (Article I, Section 8, Clause 3)?

2. Do the powers reserved to the States under the Tenth Amendment (or even without consideration of the Tenth Amendment) constitute a limitation upon the powers of Congress to regulate commerce among the States, and serve to withdraw certain matters from the powers of Congress to regulate commerce among the States?

3. May Congress use general powers granted to it by the Constitution to regulate fields from which it is implicitly or explicitly excluded by the Constitution?

4. Should not the lawful division of powers between the Federal and State governments be judged by a comparison with the structure of federal government implicit in the scheme of government intended in the Constitution, rather than by syllogistic efforts to wring meaning out of particular ambiguous or incompatible clauses in the Constitution?

5. Do not the doctrines set forth the United States Supreme Court in its opinions of *Wickard v. Filburn*, 317 U. S. 111, and *United States v. Darby*, 312 U.S. 100, require revision as permitting, if logically followed out, a complete invasion of the Federal government into the powers reserved to the States?

6. Is United States Supreme Court not becoming aware of the unsatisfactory character of the doctrines of *Wickard v. Filburn*, and *United States v. Darby*, supra, in recent cases, particularly cases involving civil rights guaranteed under the Bill of Rights of the Constitution?

7. Are not the authorities in agreement that the doctrines set forth in *Wickard v. Filburn*, and *United States v. Darby*, supra at variance with the structure of federal government intended to be established by the Constitution?

8. Is it not contrary to due process to subsidize A at the expense of B or to penalize A so that B may be subsidized? And particularly so when the consequence is to deprive B of the greater part of the value of his property?

D. STATUTE INVOLVED

The Agriculture Adjustment Act of 1938 as relates to wheat quotas is in question. Since the statute is lengthy, pertinent parts of the statute are set forth in Appendix "C" attached hereto.

E. BASIS OF JURISDICTION

The jurisdiction of the United States District Court over this proceeding is given section 1355 of the Title 28 of the United States Code, Judiciary and Judicial Procedure, as enacted by the Act of June 25, 1948, c. 646, 62 Stat. 909, which provides:

> "Sec. 1355. Fine, penalty or forfeiture.
>
> The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, pecuniary or otherwise, incurred under any Act of Congress.

This jurisdiction is further confirmed by section 1345, of the same act which provides:

> "Section 1345. United States as plaintiff.
>
> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

Basis of Jurisdiction

Further, the Agricultural Adjustment Act of 1938, c. 30, Title III, sec. 376, 52 Stat. 66, confers jurisdiction upon the United States District Courts; this act provides:

> "The several district courts of the United States are vested with jurisdiction specifically to enforce the provisions of this chapter. If and when the Secretary shall so request, it shall be the duty of the several United States Attorneys in their respective districts, under the direction of the Attorney General, to institute proceedings to collect the penalties provided in this chapter. The remedies and penalties provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law."

A penalty is provided under supplemental provisions to the Agricultural Adjustment Act of 1938, as amended, 52 Stat. 52, 7 U.S.C. 1340. The basic text of these supplemental provisions was passed by the Act of May 26, 1941, c. 133, 55 Stat. 203; with subsequent amendments providing minor alterations in the text; these amendments are: Dec. 26, 1941, ch. 626, sec. 2, 55 Stat. 860; Dec. 26, 1941, c. 636, 55 Stat. 872; Aug. 29, 1949, c. 518, sec. 3 (b), 63 Stat. 676; July 14, 1953, c. 194, sec. 3, 67 Stat. 151; Aug. 28, 1954, c. 1041, Title III, sec. 313, 68 Stat. 905. Since the text of this section applicable to this proceeding is long, it is given in Appendix "C" of this petition.

The Secretary of Agriculture requested the United States Attorney for the Middle District of Pennsylvania to bring this proceeding. See paragraph I of Complaint. This is the duty of the United States Attorney, as provided by section 507 of Title 28 of the United States Code, Act of June 25, 1948, c. 646, 62 Stat. 909, which provides:

Basis of Jurisdiction

"(a) Except as otherwise provided by law, it shall be the duty of the United States Attorney, within his district, to:

* * * * * * * *

(1) Prosecute or defend, for the government, all civil actions, suits or proceedings in which the United States is concerned."

The defendant, Elsie Mumma, resides at 283 East Main Street, Hummelstown, Dauphin County, Pa., which is within the jurisdiction of the United States District Court for the Middle District of Pennsylvania. See Paragraph I of Complaint. Venue lies in the district wherein the defendant resides, under the provisions of section 1391 (b) of Title 28 of the United States Code, Act of June 25, 1948, c. 646, 62 Stat. 909, which provides:

"(b) a civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law."

F. ARGUMENT

The government attempts to collect from the defendant a civil penalty for planting more acres of wheat than the quota assigned to her by the government. The morality or desirability of the collection of such a penalty is not argued. The only issue is whether or not the federal government has the power to regulate the planting of wheat by use of a civil penalty for planting excess acres of wheat above quota. It will generally be conceded that the planting of wheat is not commerce in wheat, and that the federal government's authority over the planting of wheat can only be deduced from the effect which the planting of wheat will have upon the commerce in wheat. There is nothing in the record to show that this defendant's wheat entered into commerce in any way or even affected commerce in any way. There is no showing that this defendant's planting of wheat caused her to withhold a demand for wheat from the interstate market, either directly through her own demand, or by the demand of those who bought products from her farm—whether of wheat, livestock, or dairy, products.

The whole question of the federal government's power to penalize this defendant for raising wheat must rest solely upon the probable effect which any planting of wheat must have upon the market for wheat.

The United States Attorney and the United States Circuit Court of Appeals for the Third Circuit in its opinion rely upon the cases of *Wickard v. Filburn*, 317 U.S. 111.

This case is an expansion of the doctrine set forth in *Gibbons v. Ogden*, 9 Wheat. 1, as follows:

> "We are now arrived at the inquiry—what is this power (to regulate commerce among the states)? It is the power to regulate, that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution." (pages 196-197)

This doctrine has been extended so that if the subject matter is commerce among the states, there are no limitations in the Constitution on the exercise of the commerce power —except that it be exercised for legitimate ends: *McCullough v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579, and *United States v. Darby*, 312 U.S. 100. We call this the "syllogistic" interpretation of the commerce clause. But under these doctrines the courts in determining legitimate ends are not governed by implied reservations on powers of Congress in the Constitution, but on the court's opinion as to what is "legitimate", that is, not outside the scope of action of any lawful government without a Constitution.

We urge that on the contrary, the general powers of government, such as the taxing power, the commerce power, and the spending power, are implicitly limited by the scheme of government intended by the framers of the Constitution, and that every exercise of power by either the state or federal government must be tested as to whether it is permitted by this general scheme of government. We call this the "structure" interpretation of the commerce clause, as opposed to the "syllogistic" interpretation. In other words, the Constitution cannot be interpreted by any

narrow textual construction, but must be interpreted by seeking the guidance of its "spirit".

In particular, it is evident that the framers of the Constitution did not intend the commerce clause to regulate more than—to use an analogy—the broad harbors of commerce. This power was not to be used to pursue commerce up the rivers and brooks of commerce until it regulated even the very falling of the rains from heaven. There was to be a province of economic activity left to state regulation which was still to be immune from federal regulation even though the local economic activity might substantially affect interstate commerce. The question, it may be true, is one of degree, but where the line is to be drawn is not to be determined by any logical syllogisms, but by the structure of federal government which is implicit in the Constitution, and in the minds and intent of its framers.

We contend that the framers of the Constitution never intended that a man could be penalized for growing food to eat on his own land. Yet that is the extent of our present regulation which is sought to be enforced by the government in this case. While one can syllogistically argue that eating one's own crops "substantially affects" interstate commerce, it is also clear that such regulation exceeds the limit of the powers of the federal government implicit in the structure of government intended by the Constitution.

The syllogistic doctrine of interpretation of the commerce clause is conceded to be out of harmony with intent of the framers of the Constitution. Professor Felix Frankfurter wrote before he became Mr. Justice Frankfurter:

> "Marshall's use of the commerce clause greatly furthered the idea that though we are a federation of

states, we are also a nation, and gave momentum to the doctrine that state authority must be subject to such limitations *as the Court finds it necessary to apply for the protection of the national community.* It was an audacious doctrine, which, one may be sure, *would hardly have been publicly avowed in support of the adoption of the Constitution.* Indeed, *"The Federalist" in effect denied it,* by assuring that only the express prohibitions in the Constitution limited the taxing power of the states." (The Commerce Clause, pages 18, 19, emphasis added.)

Also:

"The result of this sequence of cases (Gibbons v. Ogden, 9 Wheat. 1; Brown v. Maryland, 12 Wheat, 419; and Willson v. The Black Bird Creek Marsh Co., 2 Pet. 245), was to make the court collaborate with Congress in the regulations of foreign and domestic commerce, and thereby bring before the Court questions inescapably implicating *legislative* policy. Policy is at stake because of the actualities of life do not lend themselves to that scrupulous insulation of disparate interest, which, formally at least, is the presupposition of the distribution of governmental authority as between the central government and the states. The history of the commerce clause, from the pioneer efforts of Marshall to our own day, is the history of imposing artificial patterns upon the play of economic life whereby an accommodation is achieved between the interacting concerns of states and nation. The problems of the commerce clause are problems in this process of accommodation, however different the emphasis of preference of interest, and however diverse

> the legal devices by which different judges may make these accommodations. Because such are the problems and such the relevant consideration for their adjustment, the constitutional labors of the Supreme Court, especially with the commerce clause are accurately described as *statecraft*." (Idem, pages 21, 22) (Emphasis added.)

On the other hand, if legislation and statecraft are involved, it is apparent that the intention of the framers of the Constitution is not the test. But in any case, it is clear that a syllogistic test is not proper. And if statecraft is the test, we are prepared to argue the wisdom of Congress to this Court—although we have always been told this was improper in a judicial forum.

The difficulty of the syllogistic test when civil rights are involved is illustrated in the cases of *United States v. Kahrigher*, 345 U.S. 22, and *United States v. Five Gambling Devices*, 346 U.S. 441. In the *Kahrigher* case, the court held that Congress could tax gamblers although its taxing scheme was designed to bring about a systematic confession of gamblers, and might therefore violate the Fifth Amendment against self-incrimination. But this decision was by a six to three vote. In the *Five Gambling Devices* case, the court held that the gambling devices could not be confiscated because of procedural defects although it seems implicit in this decision that regulation under the commerce power does not enable the federal government to set aside the rights of citizens in criminal cases.

Mr. Justice Frankfurter's dissent in the *Kahrigher* case is particularly instructive; he says:

> "Issues of such gravity affecting the balance of powers within our federal system are not susceptible

of comprehensive statement by smooth formulas such as that a tax is nonetheless a tax although it discourages the activities taxed, or that a tax may be imposed although it may effect ulterior ends. No such phrase, however fine and well-worn, enables one to decide the concrete case. * * *

"A nominal taxing measure must be found an inadmissible intrusion into a domain of legislation reserved for the States not merely when Congress requires that such a measure is to be enforced through a detailed scheme of administration beyond the obvious fiscal needs, as in the Child Labor Tax Case (Bailey v. Drexel Furniture Co., 259 U.S. 20), supra. That is one ground for holding that Congress was constitutionally disrespectful of what is reserved to the States. Another basis for deeming such a formal revenue measure inadmissible is presented by this case. In addition to the fact that Congress was concerned with activity beyond the authority of the federal government, the enforcing provision of the enactment is designed for the systematic confession of crimes with a view to prosecution for such crimes under State law. * * *

"It is a wholly different thing to hold that Congress, which cannot constitutionally grapple directly with gambling in the States, may compel self-incriminating disclosures for the enforcement of State gambling laws, merely because it does so under the guise of a revenue measure obviously passed not for revenue purposes. The motive of congressional legislation is not for our scrutiny, provided only that the ulterior purpose is not expressed in ways which negative what the revenue words on their face express and, which

do not seek enforcement of the formal revenue purpose through means that offend those standards of decency in our civilization against which the due process is a barrier." 345 U.S. 22, 38, 39, 40

We therefore urge that the enforcement of the penalty provisions of the Agricultural Adjustment Act of 1938 in regard to wheat acreage quotas, without a showing that the wheat passed into interstate commerce, is contrary to the Fifth and Tenth Amendments, and that in order so sustain an extension of the commerce power of the federal government over the planting of wheat it is necessary to rely upon a "syllogistic" interpretation of the Constitution which is fraught with grave dangers, particularly as applies to the diminishment of the rights guaranteed by the Bill of Rights of the Constitution by the so called general powers of the federal government over commerce, taxation and spending.

Respectfully submitted,

ANDREW WILSON GREEN,

Attorney for Defendant.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
Middle District of Pennsylvania

Civil No. 5368

United States of America
vs.
Elsie Mumma

OPINION OF HON. FREDERICK V. FOLLMER

Now, this 22nd day of November, 1955, the above matter came before the Court on motion of the Plaintiff for Summary Judgment under Rule 56 of the F.R.C.P. The pleadings, together with the affidavits, show that there is no genuine issue as to any material fact. The best that can be said for the Answer and the Affidavits is that they contain mere formal denials and general allegations without showing any facts in detail or with precision to prevent such a summary judgment.

The hearing showed that the action was brought pursuant to the Agricultural Adjustment Act of 1938, as amended, 7 U.S.C. 1281, et seq., and that the defendant under the Act and Regulations promulgated thereunder,

was a producer of wheat during 1954 on the farm identified by Serial No. SB-9; that she received notice of the wheat acreage allotment, and notice of the farm marketing quota and farm marketing excess of wheat determined for her farm, No. SB-9, as provided by the Act and Regulations; that she did not avail herself of any of the remedies under the Act and Regulations for an administrative and judicial review; that wheat was harvested on the farm in 1954; that the defendant had not stored or delivered to the Secretary of Agriculture the farm marketing excess of wheat determined for her farm, nor had defendant paid the penalty imposed thereon. It further appeared to Court that the counterclaim is not only without merit, but is also without authority since the Government cannot be sued without its consent, and therefore the counterclaim must be dismissed.

Therefore, It Is Hereby Ordered, Adjudged and Decreed that Summary Judgment be entered in favor of the United States of America and against the defendant, Elsie Mumma, in the sum of Four Hundred Three Dollars and Twenty Cents ($403.20), plus the costs of suit, and that the counterclaim be and is hereby dismissed.

FREDERICK V. FOLLMER
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 11,887

United States of America,
Plaintiff-Appellee

v.

Elsie Mumma,
Defendant-Appellant

Appeal from the United States District Court for the Middle District of Pennsylvania.

Argued October 2, 1956

OPINION OF THE COURT
(Filed October 5, 1956)

Per Curiam:

This is an appeal from a judgment for civil penalties under the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. sec. 1281 et. seq.).

Appellant's sole contention is that the Act is unconstitutional. In line with this, she argues that Wickard v. Filburn, 317 U.S. (1942) which upheld the constitutionality of the Act and the cases which followed that decision, including our own Blattner v. United States, 223 F. 2d 468, (1955), were all decided erroneously. We disagree with that view.

The judgment of the district court will be affirmed.

APPENDIX C

The statute involved in this appeal is found in 7 U.S. C. 1340. The basic text of this provision was enacted by the Act of May 26, 1941, c. 133, 55 Stat. 203. Subsequent minor amendments are enacted in the following legislation: Acts of Dec. 26, 1941, c. 626, sect. 2, 55 Stat. 860; Dec. 26, 1941, c. 636, 55 Stat. 872; Aug. 29, 1949, c. 518, sect. 3 (b), 63 Stat. 676; July 14, 1953, c. 194, sect. 3, 67 Stat. 151. A later amendment to the section was passed by the Act of Aug. 29, 1954, c. 1041, Title III, sect. 313, 68 Stat. 905, making its provisions inapplicable to corn. The text of this statute as it applies to the present case is set forth below:

"Sect. 1340 Supplemental provisions relating to wheat marketing quotas; marketing penalty for rice; crop loans on cotton, wheat, rice, tobacco, and peanuts:

Notwithstanding the other provisions of this chapter—

(1) the farm marketing quota under this chapter for any crop of wheat shall be the actual production of the acreage planted to wheat on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to wheat on the farm which is in excess of the farm acreage allotment for wheat.

The normal production, or the actual production, whichever is the smaller, of such excess acreage is hereinafter called the "farm marketing excess" of wheat. For the purposes of this section "actual production" of any number of acres of wheat on a farm means the

actual average yield of wheat for the farm times the number of such acres.

(2) During any marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of wheat. The rate of penalty on wheat shall be 45 per centum of the parity price per bushel of wheat as of May 1 of the calendar year in which the crop is harvested.

(3) The farm marketing excess for wheat shall be regarded as available for marketing, and the penalty and the storage amount or amounts to be delivered to the Secretary of the commodity shall be computed upon the normal production of the excess acreage. Where, upon the application of the producer for an adjustment of penalty or of storage, it is shown to the satisfaction of the Secretary that the actual production of the excess acreage is less than the normal production thereof, the difference between the amount of the penalty or storage as computed upon the basis of normal production and as computed upon the basis of normal production shall be returned to or allowed the producer. The Secretary shall issue regulations under which the farm marketing excess of the commodity for the farm may be stored or delivered to him. Upon failure to store or deliver to the Secretary the farm marketing excess within such time as may be determined under regulations prescribed by the Secretary, the penalty computed as aforesaid shall be paid by the producer. Any wheat delivered to the Secretary hereunder shall become the property of the United States and shall be disposed of by the Secretary for relief purposes in the United

States or in foreign countries or in such other manner as he shall determine will divert it from normal channels of trade and commerce.

(4) Until the producers on any farm store, deliver to the Secretary, or pay the penalty on, the farm marketing excess of any crop of wheat, the entire crop of wheat produced shall be subject to a lien in favor of the United States for the amount of the penalty.

(5) The penalty upon wheat stored shall be paid by the producer at the time, and to the extent, of any depletion in the amount of the commodity so stored, except depletion resulting from some cause beyond the control of the producer.

(6) Whenever the planted acreage of the then current crop of wheat on any farm is less than the farm acreage allotment for such commodity, the total amount of the commodity from any previous crops required to be stored in order to postpone or avoid payment of penalty shall be reduced by that amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the planted acreage. The provisions of section 1326 (b) and (c) of this title shall be applicable also to wheat.

(7) A farm marketing quota on wheat shall not be applicable to any farm on which the acreage planted to the commodity is not in excess of fifteen acres. The marketing penalty on wheat shall not be applicable to any farm which, under the terms of the then agricultural conservation program formulated under sections 590g, 590h, 590i, 590j-590q of Title 16, is classified as a nonallotment farm, etc. * * *

(8) Until the farm marketing excess of wheat is stored or delivered to the Secretary or the penalty thereon is paid, each bushel of the commodity produced on the farm which is sold by the producer to any person within the United States shall be subject to the penalty as specified in paragraph (2) of this section. Such penalty shall be paid by the buyer who may deduct an amount equivalent to the penalty from the price paid to the producer.

(9) The marketing penalty for rice, etc. * * *

(10) The Commodity Credit Corporation is directed to make available upon the 1941, 1942, 1943, 1944, 1945 and 1946 crops, etc. * * *

(11) The provisions of the section are amendatory of and supplementary to this chapter, and all provisions of law applicable in respect to marketing quotas and loans under such chapters as so amended and supplemented shall be applicable, but nothing in this section shall be construed to amend or repeal section 1301(b)(6), 1323(b), or 1335(d) of this title.

(12) Notwithstanding any of the foregoing provisions, the farm marketing excess for any crop of wheat shall not be larger than the amount by which the actual production of such crop of wheat on the farm exceeds the normal production of the farm wheat acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary. Where a downward adjustment in the amount of the farm marketing excess is made pursuant to the provisions of this paragraph, the difference between the amount of the penalty or storage as computed upon the adjusted farm marketing excess shall be returned to or allowed the producer."

THE RECORD

IN THE UNITED STATES DISTRICT COURT

Middle District of Pennsylvania

Civil No. 5368

United States of America

vs.

Elsie Mumma

(1) COMPLAINT

Plaintiff, for cause of action against defendant, alleges:

I

That J. Julius Levy, United States Attorney for the Middle District of Pennsylvania, acting under the direction of the Attorney General, upon request of the Secretary of Agriculture, hereinafter referred to as "the Secretary", brings this complaint under the provisions of the Agricultural Adjustment Act of 1938, as amended and supplemented (7 U.S.C. 1281 to 1393; Act of January 30, 1954, 68

Stat. 4; and Act of August 28, 1954, 68 Stat. 897), hereinafter referred to as "the Act", to collect penalties provided in the Act from defendant. This Court has jurisdiction of the subject matter of this action under the provisions of Section 376 of the Act (7 U.S.C. 1376), and Title 28, United States Code, Section 1345. Defendant, whose mailing address is 283 East Main Street, Hummelstown, Pa., resides in Dauphin County, in said State, and within the jurisdiction of this Court.

II

After the performance and occurrence of all conditions precedent the marketing quota provisions of the Act were made effective with respect to the 1954 crop of wheat for the marketing year beginning July 1, 1954 (7 U.S.C. 1301, 1332, 1333, 1335; 18 F.R. 2417, 3780, 4166; 7 U.S.C. 1336; 18 F.R. 4221, 5707), and pursuant to the Act (7 U.S.C. 1375) the Secretary issued regulations pertaining to acreage allotments (18 F.R. 2621, 3161, 4047; 19 F.R. 972, 1336, 1562), and marketing quotas (18 F.R. 6711; 19 F.R. 202, 1481, 2763, 6134, 6879, 8500; 20 F.R. 24, 189, 1200) for the 1954 crop of wheat, hereinafter referred to as "the regulations".

III

Wheat was planted for harvest in 1954 on the farm in Dauphin County, Pennsylvania, identified under the regulations (Reg. Sec. 728.454) by Serial No. 8B-9, hereinafter referred to as "the farm", and all or part of such wheat was harvested prior to January 31, 1955. Defendant, as owner, landlord, tenant or sharecropper, was entitled to all or a share of such crop of wheat or of the proceeds thereof and under the Act and regulations was a producer of wheat on the farm with respect to the 1954 crop (Reg. Sec. 728.451(1)).

IV

After the performance and occurrence of all conditions precedent and in accordance with the Act and regulations (7 U.S.C. 1334; 18 F.R. 4418; 19 F.R. 4850; Reg. Secs. 728.410-728.424), the Secretary, acting through the Dauphin County Agricultural Conservation and Stabilization Committee, hereinafter referred to as "the committee", established a wheat acreage allotment of 6 acres for said farm for the 1954 crop of wheat and duly gave written notice thereof in accordance with law (7 U.S.C. 1362).

V

In compliance with the Act and regulations (7 U.S.C. 1301(b)(13)(E); Reg. Sec. 728.453; 7 U.S.C. 1340; Reg. Secs. 728.451, 728.458, 728.459; 7 U.S.C. 1334; Reg. Secs. 728.410-728.424; 7 U.S.C. 1388), the committee determined for said farm for the 1954 crop of wheat the following facts:

Acreage of wheat	24	acres
Farm wheat acreage allotment	6	"
Excess acreage of wheat	18	"
Wheat normal yield per acre	20	bushels
Normal production of acreage allotment	120	"
Farm marketing excess of wheat	360	"

Written notice of said determination of facts and that the farm marketing quota of wheat for the 1954 crop for the farm was the amount of wheat produced thereon in 1954, less the farm marketing excess, was duly issued and mailed to defendant by the committee on or about June 4, 1954 (7 U.S.C. 1340; Reg. Secs. 728.458, 728.459; 7 U.S.C. 1362; Reg. Sec. 728.460). The notice informed defendant of the

provisions of law relating to a downward adjustment in the farm marketing excess and the review of the farm marketing quota or farm marketing excess or any determination made in connection therewith. Defendant failed to apply under the Act and regulations for a downward adjustment in the farm marketing excess determined for the farm (7 U.S.C. 1340; Reg. Sec. 728.461). Defendant further failed to apply for a review by a review committee of the farm marketing quota or farm marketing excess or any of the aforesaid determinations made in connection with said quota or excess as provided in the Act and regulations (7 U.S.C. 1363; Reg. Sec. 728.465).

VI

In accordance with the requirements of the regulations (Reg. Secs. 728.461, 728.477, and 728.490) the Dauphin State Agricultural Stabilization and Conservation Committee, United States Department of Agriculture, determined for the 1954 crop year that the date on which the threshing of wheat is normally substantially completed in Dauphin County, Pennsylvania, is August 16, 1954 (20 F.R. 24). After the issuance of the notice referred to in paragraph V hereof the regulations were amended to provide that the penalty on the farm marketing excess of wheat for any farm should be remitted not later than sixty calendar days after the date on which the threshing of wheat is normally substantially completed in the county in which the farm is situated, as determined by the State committee, or January 31, 1955, whichever is the later, and to provide for appropriate credit for any portion of the farm marketing excess stored or delivered to the Secretary on or before the aforesaid applicable date (Reg. Sec. 728.477(b), as amended, 20 F.R. 24).

Complaint

VII

The parity price per bushel of wheat, as of May 1, 1954, was $2.50, and under the provisions of the Act (7 U.S.C. 1952 ed. Supp. I, Sec. 1340(2)) the rate of penalty applicable to the 1954 crop of wheat is $1.12 per bushel (Reg. Sec. 728.475, as amended, 19 F.R. 2763).

VIII

Defendant has failed to store or deliver to the Secretary any part of said farm marketing excess in accordance with the Act and regulations (7 U.S.C. 1340(3); Reg. Sec. 728.482, 728.483). Under the Act and regulations the penalty applicable to the 1954 farm marketing excess of wheat determined for the farm is $403.20, and said sum was required to be paid by defendant not later than January 31, 1955. Defendant has failed and refused to pay said penalty or any part thereof and no part of said penalty has otherwise been paid.

IX

Wherefore, plaintiff demands judgment against defendant for the sum of $403.20; the costs of this action, and such other relief as this Court may deem just and proper in the premises.

United States of America

By (s) J. JULIUS LEVY

United States Attorney

(2) ANSWER

United States District Court
Middle District of Pennsylvania
Civil Action File—No. 5368
Hon. J. Julius Levy, U. S. Attorney
Federal Post Office Building
Scranton, Pennsylvania.

Clerk of U. S. District Court:

This is my Answer to be filed in United States Court for relief from complaint #5368. Please file same.

(Signed) Elsie Mumma

August 31, 1955.

Your Honor:

Summons #5368 was received August 30—10:15 A.M. at my residence 283 E. Main Street, Hummelstown, Pennsylvania, by service of U. S. Marshal William L. Capelle. In answer, with sorrow I declare—

1. I am not guilty of the charges contained in this complaint.
2. The complaint is false and incorrect.
3. I am an unmarried orphan in a homestead of my forefathers. I ask for a Trial by Jury at the earliest possible hour in U. S. Court, Harrisburg, Pennsylvania.

Answer

II.

Complaint #5368

Answer

4. The Government owes me $450.00 for lime practises into which they enticed me, without remuneration.

5. The Government neglected to provide a requested system to prevent extreme soil Erosion on my farm, which is part of the program justifying the Agricultural Committee being in existence.

I live by the Laws of God, to whom all belongs, and I pray for relief from the burden of the complaint Number 5368.

(Signed) Miss Elsie Mumma
283 E. Main Street
Mumma Farm
Hummelstown, Pennsylvania.

August 31, 1955

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 676

ELSIE MUMMA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Pennsylvania (Pet. 15–16) is not reported. The opinion of the United States Court of Appeals for the Third Circuit (Pet. 17–18) is reported in 237 F. 2d 795.

JURISDICTION

The judgment of the Court of Appeals was entered on October 5, 1956 (Pet. 17–18). The petition for a writ of certiorari was filed on January 3, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

414592—57——1

QUESTION PRESENTED

Whether the civil penalties provided by the Agricultural Adjustment Act of 1938 for wheat produced on acreage in excess of a farm's wheat acreage allotment are constitutional as applied to excess production not shown to have entered the channels of interstate commerce.

STATUTE INVOLVED

The relevant provisions of the Agricultural Adjustment Act of 1938, as amended, are set forth in Appendix C to the petition (Pet. 19–22).

STATEMENT

This action was instituted to recover the civil penalty imposed by the Agricultural Adjustment Act of 1938 on petitioner's 1954 "farm marketing excess". The complaint alleged that petitioner had planted and harvested wheat in 1954 in excess of the wheat acreage allotment established for her farm, that she had not stored or delivered to the Secretary of Agriculture any part of such excess, and that she had refused to pay the statutory penalty thereon, amounting to $403.20 (Pet. 23–27). The complaint also alleged that petitioner had not applied for a downward adjustment of her farm marketing excess, or for an administrative review of the marketing quota or marketing excess determined for her farm (Pet. 26).

The district court found that there was no genuine issue as to any material fact and granted the Government's motion for summary judgment (Pet. 15–16). On appeal, petitioner's sole contention was that the applicable provisions of the Agricultural Adjustment

Act of 1938 are unconstitutional. The court of appeals affirmed *per curiam,* stating that it disagreed with the contention that *Wickard* v. *Filburn,* 317 U. S. 111, was erroneously decided (Pet. 17–18).

ARGUMENT

This case unquestionably is controlled by *Wickard* v. *Filburn,* 317 U. S. 111, and the only issue which the petition for certiorari presents is whether that case should now be overruled. Not only was the decision in *Wickard* v. *Filburn* unanimous, but it has not since been either questioned or qualified by this Court, which reaffirmed the case as recently as the 1954 Term (*Maneja* v. *Waialua Agricultural Co.,* 349 U. S. 254, 258–259). Nor does petitioner advance any constitutional argument which was not, in substance, presented, considered, and rejected in *Wickard* v. *Filburn.*

That case, like the present one, involved the constitutionality of the penalty imposed by the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1340) on wheat planted and harvested on acreage in excess of a farm's wheat acreage allotment. 317 U. S. at 113–114. The Court, after stating that the statutory penalty for wheat produced on excess acreage applies irrespective of whether wheat so produced "is sold or intended to be sold" (*id.,* 119), upheld its constitutionality. The ruling, in summary, was as follows:

Congress, under its commerce power, may regulate a local activity "if it exerts a substantial economic effect on interstate commerce * * *." *Id.,* 125. One of the primary purposes of the Act was to increase the market price of wheat, "and to that end to limit

the volume thereof that could affect the market." *Id.*, 128. Consumption on the farm has "a substantial influence on price and market conditions" because wheat so used supplies a need "which would otherwise be reflected by purchases in the open market." *Ibid.* The fact that the production of a particular farmer "may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Id.*, 127–128.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.
VICTOR R. HANSEN,
Assistant Attorney General.
CHARLES H. WESTON,
Attorney.

ROBERT L. FARRINGTON,
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Department of Agriculture.

JANUARY 1957.

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